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# SUPREME COURT OF THE UNITED STATES.

## No. 145.

HENRY HILL, PLAINTIFF IN ERROR,

vs.

CALEB B. SMITH, ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF INDIANA.

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GIDEON, print.

Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the (27th) twenty-seventh day of May, in the year of our Lord eighteen hundred and fifty-seven, that being the (9th) ninth judicial day of said May term, for the year 1857.

Present, the honorable John McLean, one of the Associate Justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, Judge of said district.

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| HENRY HILL, a cititizen of the State of Illinois,<br>vs.<br>CALEB B. SMITH, Thomas Tyner, David A. Powell, George B. Rogers, Hugh Hanna, Martin L. Bundy, Pleasant Johnson, Richard M. Corwine, Walter March, Samuel Jay, Solomon Meredith, and Thomas J. Sample, citizens of the State of Indiana. | Assumpsit.<br>Damages, $10,000. |

Be it remembered, that heretofore, to wit, on the (5th) fifth day of March, in the year eighteen hundred and fifty-seven, the plaintiff, by his attorneys, O. H. and Jer. Smith, filed in the clerk's office of said court his precipe for summons, in these words, to wit:

UNITED STATES OF AMERICA,
*District of Indiana.*

Circuit Court of the United States for said district.

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| HENRY HILL, a citizen of Illinois,<br>vs.<br>CALEB B. SMITH, Thomas Tyner, David A. Powell, George B. Rogers, Hugh Hanna, Martin L. Bundy, Pleasant Johnson, Richard M. Corwine, Walter March, Samuel Jay, Solomon Meredith, and Thomas J. Sample, citizens of Indiana. | Assumpsit.<br>Damages, $10,000. |

The clerk will issue process against the defendants in the above entitled case.

O. H. & JER. SMITH,
*Attorneys for Plaintiff.*

March 5th, 1857.

And thereupon, to wit, on the day and year last aforesaid, to wit, the fifth day of March, in the year eighteen hundred and fifty-seven,

there issued from the clerk's office aforesaid the following summons, to wit:

The President of the United States of America to the Marshal of the district of Indiana, greeting:

You are hereby commanded to summon Caleb B. Smith, Thomas Tyner, David A. Powell, George B. Rogers, Hugh Hanna, Martin L. Bundy, Pleasant Johnson, Richard M. Corwine, Walter March, Samuel Jay, Solomon Meredith, and Thomas J. Sample, citizens of Indiana, if they may be found in your district, to be and appear before the circuit court of the United States for the district of Indiana, to be holden before the judges thereof, at Indianapolis, in said district, on the third Monday in May next, to answer unto Henry Hill, a citizen of the State of Illinois, in a plea of assumpsit—Damages, ten thousand dollars, ($10,000)—and have you then and there this writ.

Witness, honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, [SEAL.] hereunto affixed, at Indianapolis, this fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

H. BASSETT, *Clerk.*

Which summons was duly delivered to the marshal of the said district of Indiana, by him served, and returned with the following endorsement thereon, to wit:

Served, as commanded within, upon Walter March on the 6th day of March, A. D. 1857, by copy delivered personally into his hands; and upon Solomon Meredith and Thomas Tyler, by reading and copy delivered into the hands of each; and upon Pleasant Johnson by copy left at his last usual place of residence in Wayne county, Indiana, in the hands of his wife; all served on the 30th day of March, 1857; and upon Martin L. Bundy, by reading and copy delivered personally into his hands same date as above; and Thomas J. Sample, by copy left at his last usual place of residence in Muncie, Delaware county, In., left in the hands of Emily Smith, a member of his family, on the 31st day of March, 1857; upon Hugh Hanna, by reading and copy delivered into his hands on the 11th day of April, 1857; and upon Samuel Jay, by copy delivered personally into his hands on the 13th day of April, 1857. I return not found as to Smith, Powell, Rogers, and Corwine.

JOHN L. ROBINSON,
*U. S. Marshal, Dist. Ind.*
By JESSE D. CARMICHAEL,
*Deputy.*

And afterwards, to wit, on the (11th) eleventh day of March, in the year last aforesaid, to wit, the year eighteen hundred and fifty-seven, the plaintiff, by his attorneys, filed his certain declaration in these words, to wit:

THE UNITED STATES OF AMERICA,
*District of Indiana.*

In the Circuit Court of the United States for the district of Indiana.

Henry Hill, a citizen of the State and district of Illinois, the plaintiff in this suit, complains of Caleb B. Smith, Thomas Tyner, David A. Powell, George B. Rogers, Hugh Hanna, Martin L. Bundy, Pleasant Johnson, Richard M. Corwine, Walter March, Samuel Jay, Solomon Meredith, and Thomas J. Sample, citizens of the State and district of Indiana, defendants in this suit, of a plea of trespass on the case upon promises.

For that whereas, heretofore, to wit, on the 17th day of August, A. D. 1853, at the State and district of Indiana aforesaid, the said defendants, for the consideration therein expressed, to wit, that the said plaintiff would then and there convey to the Cincinnati, New Castle, and Michigan Railroad Company a certain tract of land in Delaware county, in the State and district of Indiana, containing three hundred and nine acres, for the sum of six thousand and one hundred dollars of the capital stock of said company, executed and delivered to the said plaintiff their guaranty in writing, in the words and figures following, to wit:

"Whereas Henry Hill, of Delaware county, has proposed to convey to the Cincinnati, New Castle, and Michigan Railroad Company, a certain tract of land in Delaware county, containing three hundred and nine acres, for the consideration of six thousand one hundred dollars, to be paid in the capital stock of said company, at par, on the condition that Caleb Smith and other responsible persons will guaranty that the said stock shall be worth par in three years from the present date, and in default thereof, that the company shall make it up to par; and whereas the said Cin., New Castle, and Michigan Railroad Company have agreed by a resolution of their board of directors to accept said proposition: Now, we, the undersigned, in consideration of the premises, hereby guaranty to the said Henry Hill, that the said stock shall be worth par in three years from the date of this instrument, and if at the expiration of that date said stock shall not be worth par, we guaranty the said Henry Hill, that the said Cincinnati, New Castle, and Michigan Railroad Company shall make up to him or pay him

whatever sum the said stock shall be worth less than par, so as to make the said stock worth par to said Henry Hill at that date.

"Witness our hands this 17th day of Aug. 1853.

CALEB B. SMITH,
THOMAS TYNER,
D. A. POWELL,
G. B. ROGERS,
H. HANNA,
M. L. BUNDY,
PLEASANT JOHNSON,
R. M. CORWINE,
WALTER MARCH,
SAMUEL JAY,
S MEREDITH,
THOMAS J. SAMPLE."

Whereby the said defendants then and there undertook and faithfully promised, and guarantied him, the said plaintiff, as in the said instrument in writing specified. And the said plaintiff avers, that he then and there conveyed by deed said lands according to the true intent and meaning of said guarantee to said railroad company; that the said stock was not worth par in three years from the date of the said instrument in writing; but, on the contrary, was and is worthless, and of no value, to wit, at the State and district aforesaid; and he further avers, that at the expiration of the said three years from the date of said instrument, to wit, on the 17th day of August, 1856, the said stock was not worth par; but, on the contrary, was worthless, and of no value whatever, and the said Cincinnati, New Castle, and Michigan Railroad Company did not then and there make up to him, the said plaintiff, and pay him such sum as the said stock was then worth less than par, so as to make the said stock worth par to the said plaintiff at that date, to wit, worth the sum of six thousand and one hundred dollars on the said 17th day of August, A. D. 1856, nor did it make up and pay any part thereof, but it hath hitherto wholly failed, neglected, and refused so to do; and the said company was then, and hitherto hath continued to be, notoriously insolvent and unable to make up and pay the same, to wit, at the State and district aforesaid, of all which said promises the said defendants then and there had notice; yet the said defendants not regarding their said promise, undertaking, and guaranty, but contriving and intending to deceive and defraud the said plaintiff in this behalf, have not as yet made good and kept their said guaranty, and have not caused the said Cincinnati, New Castle, and Michigan Railroad Company to make up and pay to the plaintiff the sum that the said stock was, on the 17th day of August, 1856, worth less than par, to wit, the sum of six thousand and one hundred dollars, nor have the said

defendants, or either of them, paid the same, or any part thereof, though often requested so to do; but to pay the same, and every part thereof, they and each of them have hitherto wholly neglected and refused, and still do wholly neglect and refuse, and the said sum of six thousand and one hundred dollars, (being the sum that the said stock was worth less than par, on the said 17th day of August, 1856,) with the interest thereon from the said 17th day of August, 1856, and every part thereof, still remains due and wholly unpaid to the said plaintiff, to wit, at the State and district aforesaid.

And whereas also heretofore, to wit, on the 17th day of August, A. D. 1853, at the State and district aforesaid, the said plaintiff proposed to convey to the Cincinnati, New Castle, and Michigan Railroad Company a certain tract of land in Delaware county, in the State of Indiana, containing three hundred and nine acres, for the consideration of six thousand and one hundred dollars, to be paid in the capital stock of said railroad company, at par, on condition that Caleb B. Smith, and other responsible persons, would guaranty that the said stock should be worth par in three years from that date, and in default thereof that the said company should make it up to par, which proposition the said Cincinnati, New Castle, and Michigan Railroad Company, by a resolution of their board of directors, then and there agreed to and accepted; whereupon the said defendants, in consideration of the premises, by their certain instrument in writing of that date under the hands of the said defendants, the said David A. Powell using the signature and description of "D. A. Powell," the said George B. Rogers using that of "G. B. Rogers," the said Hugh Hanna using that of "H. Hanna," the said Martin L. Bundy using that of "M. L. Bundy," the said Richard M. Corwine using that of "R. M. Corwine," and the said Solomon Meredith using that of "S. Meredith," then and there faithfully promised the said plaintiff, and guarantied to the said plaintiff that the said stock should be worth par in three years from that date, to wit, from the 17th day of August, 1853, and that if, at the expiration of the said three years from that date, the said stock should not be worth par, the said Cincinnati, New Castle, and Michigan Railroad Company should make up to him, the said plaintiff, and pay him, the said plaintiff, whatever sum the said stock should then be worth, less than par, so as to make the said stock worth par, to wit, the sum of $6,100 to the said plaintiff at that date, to wit, at the 17th day of August, 1856, in consideration of which guaranty so as aforesaid made by the said defendants to the said plaintiff, the said plaintiff then and there conveyed to the said Cincinnati, New Castle, and Michigan Railroad Company the said tract of land of three hundred and nine acres, for the sum of six thousand and one hundred dollars of the capital stock of said company, certificate for which stock the said

company then and there issued and delivered to the said plaintiff, of which conveyance the defendants then and there had notice; and the said plaintiff avers, that the said stock was not worth par in three years from the said 17th day of August, 1853, and that, at the expiration of three years from the said 17th day of August, 1853, to wit, on the 17th day of August, 1856, the said stock was not worth par, to wit, the sum of six thousand and one hundred dollars; but, on the contrary, was wholly worthless, and of no value whatever, and still continues to be so, to wit, at the State and district aforesaid; and although at the expiration of three years from the date of said instrument in writing, to wit, on the 17th day of August, 1856, to wit, at the State and district aforesaid, the said stock was wholly worthless, and of no value whatever; yet, the said Cincinnati, New Castle, and Michigan Railroad Company did not make up and pay to the plaintiff the sum the said stock was then worth, less than par, to wit, the sum of six thousand one hundred dollars, or any part thereof, or any other sum whatever, but has hitherto wholly neglected and refused so to do, though often requested, to wit, at the State and district aforesaid, of all of which said promises the said defendants then and there had notice; yet the said defendants not regarding their said promise, undertaking, and guaranty, but contriving and intending to deceive and defraud the said plaintiff in this behalf, have not as yet made good and kept their said guaranty, and have not caused the said Cincinnati, New Castle, and Michigan Railroad Company to make up and pay the plaintiff the said sum the said stock was then worth, less than par, to wit, the sum of six thousand one hundred dollars, nor have the said defendants, or either of them, paid the same, or any part thereof, though often requested so to do; but to pay the same, and every part thereof, they have hitherto wholly neglected and refused, and still do neglect and refuse so to do; and the said sum, to wit, the sum of six thousand and one hundred dollars, with the interest thereof from the said 17th day of August, 1856, and every part thereof, still remains due, and wholly unpaid to the said plaintiff, to wit, at the State and district aforesaid.

And whereas also the said defendants heretofore, to wit, on the 17th day of August, 1853, at the State and district aforesaid, in consideration that the said plaintiff would, and did then and there, convey to the Cincinnati, New Castle, and Michigan Railroad Company a certain tract of land in Delaware county, in the State and district aforesaid, containing three hundred and nine acres, for the sum of six thousand and one hundred dollars of the capital stock of said company, of which the defendants had notice, undertook, and faithfully promised the said plaintiff, that the said stock should be worth par in three years from that date, and that if it was not so worth par at the expiration of three years from that date that the said Railroad Company should make up to him, the said plaintiff,

and pay him whatever sum the said stock should then be worth less than par, so as to make the said stock worth par to him, the said plaintiff, at the expiration of three years from the said 17th day of August, 1853; and the said plaintiff avers that the said stock was not worth par at the expiration of three years from the said 17th day of August, 1853, to wit, on the 17th day of August, 1856, but, on the contrary, it was worthless, and of no value whatever, to wit, at the State and district aforesaid; yet the said Railroad Company, though then and there requested so to do, did not, nor would they then and there, make up and pay to the plaintiff the sum that the said stock was then and there worth less than par, to wit, the sum of six thousand and one hundred dollars, or any part thereof, or any other sum whatever, but have hitherto wholly neglected and refused, and still do neglect and refuse so to do, to wit, at the State and district aforesaid, of all of which the said defendants then and there had notice; yet the said defendants, not regarding their said promise and undertaking, but contriving and intending, &c., have not kept their said promise, that the said stock should be worth par at the expiration of the said three years, from the said 17th day of August, 1853, and that if it was not, the said company should then make up and pay to the said plaintiff the sum the said stock was then worth less than par, to wit, the sum of six thousand and one hundred dollars, nor have the said defendants, or either of them, paid the said sum, or any part thereof, though often requested so to do, but have hitherto wholly failed, neglected, and refused so to do, and the said sum, and every part thereof, still remains due and wholly unpaid to the plaintiff, to wit, at the State and district aforesaid.

By reason of which said several breaches in the first, second, and third counts of this declaration contained, the said plaintiff says that he is injured, and has sustained damages to the amount of ten thousand dollars, and therefore he brings his suit, &c.

O. H. & JER. SMITH,
*Atty's for Plaintiff.*

And afterwards, to wit, on the 16th day of May, in the year aforesaid, to wit, the year eighteen hundred and fifty-seven, now come Thomas Tyner, Hugh Hanna, Martin L. Bundy, Pleasant Johnson, Walter March, Samuel Jay, Solomon Meredith, and Thomas J. Sample, defendants in this cause, and file in the clerk's office of said court their certain plea in these words, to wit:

For plea to the said plaintiff's declaration say, that the several counts in said declaration, and the matters and things therein set forth, are severally insufficient in law to sustain said plaintiff's action, and this they are ready to verify, wherefore they pray judgment.

BUNDY, SMITH, MARCH & SAMPLE,
*Att'ys for Defendants.*

And afterwards, to wit, at a circuit court of the United States, begun and holden at Indianapolis aforesaid, in said district aforesaid, on the (19th) nineteenth day of May, in the year aforesaid, to wit, the year eighteen hundred and fifty-seven: Present, the honorable John McLean, judge of said circuit, and the honorable Elisha M. Huntington, judge of said district, that being the 2d, second, judicial day of said May term for the year 1857.

Come now the parties, by their attorneys, and plaintiff suggests not found as to Caleb B. Smith, David A. Powell, George B. Rogers, Richard M. Corwine, and the plaintiff files his joinder to the demurrer of the defendant, heretofore filed, in these words, to wit:

Come the plaintiff, by O. H. and Jer. Smith, his attorneys, and says, that the matters and things set forth in the several counts of his declaration are sufficient in law to sustain his, the said plaintiff's action, and this he is ready to verify, wherefore he prays judgment, &c.

O. H. & JER. SMITH,
*For Plaintiff.*

And said action was continued from day to day until the twenty-seventh (27th) day of May, in the year aforesaid, that being the (9th) ninth judicial day of said May term for the year 1857; present the same judges as aforesaid.

The parties by their counsel come, and the court being sufficiently advised, sustain the demurrer to the declaration, being of opinion that the declaration, and the matters therein stated, are not sufficient in law for the plaintiff to have and maintain the action, and the plaintiff abiding by his declaration as sufficient in law, it is considered by the court that the defendants, as to said action, go hence without day, and recover against the plaintiff their costs and charges in this behalf expended, taxed at dollars and cents; whereupon the plaintiff prays an appeal to the Supreme Court of the United States, which is granted by the court upon the plaintiff executing bond in the penalty of five hundred dollars, with Jeremiah Smith security, who is approved of by the court, and thereupon the plaintiff now files his writ of error, bond and citation, in these words, to wit:

*Writ of Error.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the judges of the circuit court of the United States for the seventh circuit and district of Indiana.

Because in the record and proceedings, and also in the rendition of the judgment in the said seventh circuit and district of Indiana, wherein Henry Hill is plaintiff, and Caleb B. Smith, Thomas

Tyner, Solomon Meredith, Martin L. Bundy, Walter March, Thomas J. Sample, Hugh Hanna, Pleasant Johnson, and Samuel Jay are defendants, manifest error hath happened, to the great damage of the said Henry Hill, as by his complaint appears, and we being willing that error, if hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city, on the first Monday in December next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what in right and according to law and custom of the United States should be done.

Witness Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 28th day of May, 1857, at Indianapolis. In testimony whereof, I, Horace Bassett, clerk [L. S.] of said circuit court, have hereunto set my hand and affixed the seal of said court at Indianapolis, the day and year last aforesaid.

HORACE BASSETT, *Clerk.*

*Bond.*

Know all men by these presents, that I, Jeremiah Smith, am held and firmly bound unto Caleb B. Smith, Solomon Meredith, Martin L. Bundy, Walter March, Thomas J. Sample, Hugh Hanna, Pleasant Johnson, Samuel Jay, and Thomas Tyner, in the penal sum of five hundred dollars, for the payment whereof well and truly to be made and done I hereby bind myself and heirs, firmly by these presents. Sealed with my seal and dated this 28th day of May, 1857.

The condition of the above obligation is such, that whereas Henry Hill has prosecuted a writ of error to the Supreme Court of the United States from the judgment of the circuit court of the United States for the district of Indiana, in a case therein, in which the said obligees are defendants, and the said Henry Hill is plaintiff; now, should the said Henry Hill well and truly prosecute said writ of error, and pay and satisfy all costs that may be adjudged against him on said appeal and writ of error, then the above obligation to be void, else to be and remain in force.

Approved May 28th, 1857.

JER. SMITH. [SEAL.]

*Citation.*

UNITED STATES OF AMERICA.

To Caleb B. Smith, Thomas Tyner, Solomon Meredith, Martin L. Bundy, Walter March, Thomas J. Sample, Hugh Hanna, Pleasant Johnson and Samuel Jay: You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1857, in pursuance to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Indiana, wherein Henry Hill is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice should not *not* be done to the parties in this behalf.

Witness Hon. Elisha M. Huntington, district judge of the United States for the district of Indiana, this 28th day of May, 1857.

E. M. HUNTINGTON.

*Service of Citation.*

The above citation served by copy on Oliver P. Morton and Walter March, esquires, counsel for the defendants in error, this 29th day of May, 1857.

JOHN L. ROBINSON,
*U. S. Marshal.*
By JESSE D. CARMICHAEL,
*Deputy.*

I, Horace Bassett, clerk of said circuit court, do hereby certify the within and foregoing to be a true and complete transcript from the records now in my office, together with the writ of error, bond and citation, and the costs of this appeal, taxed at fourteen dollars and 20 cents.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said court, at Indianapolis, this 18th day of May, 1857.

HORACE BASSETT, *Clerk.*

UNITED STATES, *ss.*

Supreme Court of the United States.—December term, 1857.

HENRY HILL, Pl'ff,
vs.
SOLOMON MEREDITH, THOMAS TYNER, PLEASANT JOHNSON, MARTIN L. BUNDY, THOMAS J. SAMPLE, HUGH HANNA, SAMUEL JAY, , WALTER MARCH, Def'ts.

And now at this day, to wit, on the first judicial day of the term aforesaid of the Supreme Court aforesaid of the United States,

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comes the said plaintiff, Henry Hill, and says, that in the record and proceedings in the above entitled cause manifest errors have intervened, in this: the circuit court of the United States gave judgment for the defendants, when by the law of the land the judgment should have been rendered for the plaintiffs.

Second. The court erred in sustaining the demurrer to the declaration.

Third. The circuit court erred in sustaining the demurrer to the first count in the declaration.

Fourth. The circuit court erred in sustaining the demurrer to the second count of the declaration.

Fifth. The circuit court erred in sustaining the demurrer to the third count in the declaration.

For which and other errors, the plaintiff prays that the judg't of the circuit court may be reversed.

O. H. SMITH,
*Att'y for Pl'ff.*

Filed 30th Sept., 1857.